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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/577,659

05/01/2006

Emmanouil Domazakis

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27526 7590 04/21/2011

HUSCH BLACKWELL LLP  
4801 Main Street  
Suite 1000  
KANSAS CITY, MO 64112

EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1781

NOTIFICATION DATE

DELIVERY MODE

04/21/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

pto-kc@huschblackwell.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/577,659	<b>Applicant(s)</b> DOMAZAKIS, EMMANOUIL	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1781	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02/09/2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>01/11/2011</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Domazakis (U.S. 2003/0049364) in view of Hendricks et al (US 5,053,237) hereinafter Hendricks and Brandt (Marinades 'Meat' Challenges) for the same reasons as stated in the Non-Final office action mailed 11/09/2010.**

### ***Response to Arguments***

Applicant's arguments filed 02/09/2011 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually (pages 5-7 of the Reply), one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Domazakis is not relied upon as a teaching of the "entire muscular tissue" meat pieces. Domazakis is not relied upon as a teaching of the injecting or tumbling of meat. Domazakis is relied upon as a teaching of:

- Contacting meat with an appropriate brine, comprising water, salt and seasonings at low temperature (0° C) during mixing in the mixing machine([0038], Claim 1);

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- Continuing mixing in the mixing machine until the temperature reaches 2°C ([0038]);
- Insertion of olive oil ([0038]);
- Continuation of mixing with simultaneous application of vacuum "in order to avoid oxidation" the temperature reaches 2 ° C ([0038]);
- Encasing meat with simultaneous application of vacuum and pasteurization ([0038])
- Freezing of the product (Abstract; paragraph [0032]).

Hendricks is relied upon as a teaching of the "entire muscular tissue" meat pieces. Hendricks discloses production of tender, flavorful, and juicy meat cuts without significantly increasing saturated fat content by injecting unsaturated vegetable fats such as olive oil (Abstract, page 5 line 58). Hendricks further discloses difficulties in production of a high quality meat fat and fattening of animals in order to produce higher meat quality (Col. 1 lines 37-1). Hendricks also discloses negative health effects associated with saturated fats consumption and positive health effects associated with unsaturated fats consumption (Col. 2 lines 58-68; Col. 3 lines 1-15). Hendricks discloses that these problems could be solved by injection of olive oil into low grades of beef in order to produce "tender, flavorful, and juicy" meat cuts "without significantly increasing saturated fat content" (Col. 2 lines 56-67). In regard to the "entire muscular tissue" meat pieces, Hendricks discloses rib eye, round and bottom round meat cuts (Col. 9 Table 1). Since both Domazakis and Hendricks disclose multiple nutritional benefits of olive oil and benefits of substitution of animal fat with olive oil ([0001]-[0012],

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[0015]), one of ordinary skill in the art would have been motivated to modify Domazakis and to employ the process of incorporation of olive oil in the "entire muscular tissue" meat pieces as disclosed by Hendricks for the benefits as disclosed by Domazakis and Hendricks. One of ordinary skill in the art would have been motivated to do so, in order to produce higher quality "tender, flavorful, and juicy" meat cuts without significantly increasing saturated fat. One of ordinary skill in the art would have been motivated to do so, in order to increase consumption of health-beneficial unsaturated fats.

Brandt is relied upon as a teaching of the injecting or tumbling of meat. In case of the chopped meat, it is not necessary to employ injecting in order to contact meat with brine, the simple mixing is enough. Brandt discloses that the contact of marinade with meat in order to impart flavor could be performed via injecting (page 4). Brandt discloses marinating/treatment of meat using injectors, tumblers, massagers (page 1). Brandt discloses that "[m]ixing, tumbling and massaging of meat at low temperatures facilitates tenderization through disintegration of the muscle fiber sheath and stretching of the myofibrils" (page 1). Therefore, Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Hendricks also discloses injecting as a method of introduction of marinade in the whole muscle meat tissue (Abstract). One of ordinary skill in the art would have been motivated to employ alternative method of contacting marinade/brine with meat such as injecting in order to achieve desired level of contact of meat with marinade. One of ordinary skill in the art would have been motivated to do so, since injection of brines/marinades into "entire muscular tissue" meat cuts was a well established practice in the art. Since Brandt

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discloses that tumbling or injecting are alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to modify Domazakis in view Brandt and to employ tumbling or injecting instead of mixing as an alternative technique for addition of various components to the meat as disclosed by Brandt. Since Domazakis discloses addition of marinade and olive oil by mixing, Brandt discloses that mixing, tumbling or injecting as alternative methods of addition of various ingredients to the meat, one of ordinary skill in the art would have been motivated to inject marinade and then further add olive oil by tumbling of meat.

In response to Applicant's arguments on pages 7 and 8 of the Reply, it is noted that both Domazakis and Hendricks discloses incorporation of unsaturated fats into meat products in order to increase the quality of meats. Therefore, both references provide the same problem and solution, and therefore provide the common ground for combination. Further in this regard, as stated above, it is noted that Domazakis discloses incorporation of brine into meat product by mixing, insertion of olive oil and then further incorporation of olive oil into meat product by mixing. Brandt discloses addition of various ingredients to the meat by either of mixing, injecting, tumbling or massaging. Therefore, Brandt discloses alternative methods of incorporating of various ingredients into meat products. One of ordinary skill in the art would have been motivated to employ alternative methods of contacting marinade/brine/oil with meat for the reasons as stated immediately above.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Larry Tarazano can be reached on (571) 272-1515. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/D. Lawrence Tarazano/  
Supervisory Patent Examiner, Art Unit 1781

/Vera Stulii/  
Examiner, Art Unit 1781